

1 referring to January of '07, I recall him
2 saying contact the Blue Ridge systems. And,
3 as I just said, later on, I believe we learned
4 about Tri-Cities, because I don't recall Tri-
5 Cities coming up in those early conversations
6 that we weren't carried there.

7 Q That must have been a surprise to
8 you, I'm thinking, that he would tell you to
9 go to a system, because I think you testified
10 earlier that everybody knew that you just go
11 directly to Ortman, that no one ever goes to
12 the individual cable systems.

13 A On the time frame, Davida was
14 still in Affiliate Relations, and still in
15 charge. And she had a conversation, I'm not
16 sure if I was part of it, or an email from --

17 I was part of an email where Gluck and Wyche
18 said okay, we have a hunting license. So, she
19 picked up the phone, I think after talking to
20 Mike, and called those places. I was above
21 Davida at that point, and my bosses, knowing
22 that I had a relationship with Ortman, said

1 you get on the phone with Ortman and talk to
2 Ortman. And when I talked to Ortman, he's
3 talking on behalf of the -- talking about the
4 Harrisburg area.

5 Q All right. Well, let's talk about
6 Harrisburg.

7 A Sure.

8 Q You asked Mr. -

9 JUDGE SIPPEL: I want to ask, who
10 were the bosses that told you to contact Mr.
11 Ortman?

12 THE WITNESS: John Angelos is my
13 direct boss.

14 JUDGE SIPPEL: Oh, I know these
15 people, but who did you remember telling you
16 to go talk to Mr. Ortman?

17 THE WITNESS: John Angelos, and
18 the CFO, Mike Haley.

19 JUDGE SIPPEL: Mike who?

20 THE WITNESS: Mike Haley, H-A-L-E-
21 Y.

22 JUDGE SIPPEL: Okay. Mike Haley.

1 THE WITNESS: They directed me to
2 go talk to Mike.

3 JUDGE SIPPEL: And what's the full
4 name of this person you've been referring to
5 as your predecessor?

6 THE WITNESS: Oh, Davida?

7 JUDGE SIPPEL: Yes.

8 MR. CARROLL: D-A-V-I-D-A.

9 JUDGE SIPPEL: Is there a first
10 name there?

11 THE WITNESS: That's her first
12 name.

13 JUDGE SIPPEL: Davida. And you
14 said the last name is?

15 THE WITNESS: Shear, S-H-E-A-R.

16 JUDGE SIPPEL: And what was her
17 position?

18 THE WITNESS: Director of
19 Affiliate Relations.

20 JUDGE SIPPEL: For?

21 THE WITNESS: She might have been
22 a Vice President.

1 JUDGE SIPPEL: Director of
2 Affiliate Relations?

3 THE WITNESS: Yes. She could have
4 been a Vice President.

5 JUDGE SIPPEL: At MASN.

6 THE WITNESS: Yes, at MASN.

7 JUDGE SIPPEL: I'm sorry, Mr.
8 Schonman. Go ahead.

9 BY MR. SCHONMAN:

10 Q So, you spoke with Mr. Ortman
11 about the Harrisburg market. Correct?

12 A Yes.

13 Q Because you believed that he
14 oversaw the Harrisburg market?

15 A Yes, I believe he did. Yes.

16 Q And he ultimately told you that
17 Comcast was not interested in carrying MASN in
18 the Harrisburg market. Is that correct?

19 A Yes, because there was no interest
20 out there in Orioles or Nationals baseball.

21 Q Were there any other reasons that
22 he gave you why Comcast didn't want to carry

1 MASN in the Harrisburg area?

2 A At that point, no. Later on, I do
3 remember a conversation I had with him, where
4 he talked about price, being too expensive.
5 And if the price was lower, he might consider
6 it more.

7 Q Did you take that back to the
8 folks at MASN, and say gee, maybe we could get
9 coverage in Harrisburg. All we have to do is
10 reduce the price, and maybe we can make this
11 thing fly?

12 A Yes, absolutely. I had those
13 discussions with not only the consultants, but
14 John Angelos.

15 Q And what came of those
16 discussions?

17 A Well, I believe after that, there
18 were settlement proposals going back and forth
19 at some point. I can't give you the exact time
20 frame, but -- I just can't give you the exact
21 time frame, but there were settlement proposal
22 exchanges between Comcast and MASN.

1 Q But the reasons -- I want to make
2 sure I understand that the reasons that Mr.
3 Ortman gave you for not carrying MASN in the
4 Harrisburg market was it was lack of interest,
5 and price?

6 A That's correct. Yes.

7 Q Anything else?

8 A Not that I can recall.

9 Q Are those bogus reasons for not
10 carrying a program network, or are those
11 legitimate reasons?

12 A Sir, it depends what kind of
13 programming network you're talking about.
14 Regional Sports Networks are different,
15 because they're unique. They have product
16 that can't be duplicated. In our case,
17 they're exclusive. So, when somebody asks me
18 about a programming network versus an RSN, to
19 me, those are two very different things.
20 There's an affinity that builds up over time.
21 The Orioles have been around since 1954, and
22 that is unique programming. So, I can answer

1 your question based on a Regional Sports
2 Network. There's demand in that area for this
3 product, and the rating is pretty good.

4 Q Do you have before you your direct
5 testimony, which is MASN Exhibit 235? Do you
6 have that?

7 A My direct testimony. Yes, sir.
8 Yes, sir.

9 Q Why don't we turn to Paragraph 37.
10 In the first sentence in Paragraph 37, you
11 state, "Obtaining carriage on Comcast's cable
12 system in Harrisburg, Roanoke-Lynchburg, and
13 Tri-Cities is critically important to MASN's
14 ability to compete fairly in the RSN
15 marketplace." And then you go on to state
16 that, "There's a relatively small percentage
17 that subscribers in these communities
18 represent", I won't mention the percentage
19 number, but there's a percentage of
20 subscribers that are not served. Is that
21 correct?

22 A Yes, sir.

1 Q If the percentage is relatively
2 small, why is carriage in these three
3 communities, to use your word, "critically
4 important to MASN's ability to compete"?

5 A Sir, it's critically important
6 because where this network goes depends on the
7 programming that it has. And if we can't
8 acquire, or at least have a shot to fairly
9 acquire compelling and relevant programming,
10 programming that cable operators will pay for
11 and value, like Washington Wizards, and
12 Washington Capitols baseball, and like Orioles
13 and Nationals baseball, and other sports that
14 people care about is important to have on the
15 network. It won't drive the bus, because
16 operators pay for pro product, and most
17 contracts that I've been associated with, pro
18 product has a minimum number of games in each
19 contract. So, pro product is a very important
20 thing.

21 JUDGE SIPPEL: What is it, pro
22 product?

1 THE WITNESS: Pro product.

2 JUDGE SIPPEL: P-R-O?

3 THE WITNESS: Yes, pro product.

4 JUDGE SIPPEL: Oh, professional?

5 THE WITNESS: Professional

6 product.

7 JUDGE SIPPEL: Thank you.

8 THE WITNESS: I'm sorry,

9 professional. The pro product is important,
10 very important to have, and it's important for
11 us to have a chance to compete fairly for
12 those products when they become available.
13 Okay? So, when the Wizards and Capitols
14 become available, we want to be 100 percent
15 penetrated, or at least exist everywhere where
16 CSNMA exists, and have a fair shot at
17 acquiring that programming. Okay?

18 Then there's Minor League product.
19 I'll call it Minor League product, non-pro
20 product. There's ACC basketball, there's ACC
21 football, there's CAA basketball, there's
22 Baltimore Ravens programming, there's

1 Washington Redskins programming, there's DC
2 United programming. If you go to the table,
3 I do go to the table. When I go to the table
4 to talk to these guys, I'm at a disadvantage,
5 because I'm not everywhere where CSNMA is.
6 Sometimes I'm lucky that I get to overpay for
7 a product.

8 In the case of the Ravens, every
9 time I talk about preseason games with them,
10 and specifically the last two years, they're
11 very upset that MASN is not delivered to
12 Harrisburg. Harrisburg is, by NFL
13 designation, the Baltimore Ravens territory.
14 Yet, the Baltimore Ravens preseason games, and
15 seven nights a week of Baltimore Ravens
16 programming is not shown in Harrisburg,
17 because MASN is not carried there. And it
18 upsets them to no end, even to the extent
19 where they ask me, would you allow the games
20 to be broadcast on the over-the-air station,
21 the ABC affiliate in Harrisburg. And I say
22 no, because it violates our agreement with the

1 operators to have programming on our channel,
 2 and programming on over-the-air in certain
 3 DMAs outside of Baltimore-Washington. So, we
 4 can't allow that to happen. We aren't going
 5 to jeopardize our operator agreements. So,
 6 we're at a big detriment. We want 100 percent
 7 matched up with CSNMA, our advertisers are not
 8 happy. They leave us, in some case, in the
 9 case of [REDACTED]. Our ratings suffer. Our
 10 viewership suffers. More importantly,
 11 affinity for those teams, whether it's the big
 12 south teams, Liberty, Radford VMI in the
 13 Roanoke-Lynchburg area, whether it's the
 14 Harrisburg Senators, or the Baltimore Orioles,
 15 or the Baltimore Ravens in Harrisburg. The
 16 fans suffer, teams don't get the messaging
 17 out, and there's a big detriment to MASN that
 18 we're not shown there in those areas.

19 JUDGE SIPPEL: Excuse me. Why
 20 would the Ravens get Harrisburg, and not the
 21 Eagles?

22 THE WITNESS: That's a shared

1 territory. The Eagles and the Ravens go into
2 Harrisburg. The Steelers do not.

3 JUDGE SIPPEL: No, I'm not talking
4 about the Steelers. I know a little bit about
5 the geography, but they are kind of close to
6 Philly. Right? Harrisburg?

7 THE WITNESS: Harrisburg is 80
8 miles away from Baltimore, and it's a lot
9 closer than it is to Philadelphia.

10 JUDGE SIPPEL: Well, how far is --
11 well, all right. I don't want to get into a
12 debate here, but it is in the -- it's a
13 Pennsylvania city that there must be -- the
14 NFL decides what, the people there like the
15 Ravens more than they like the Eagles?

16 THE WITNESS: I think a better
17 comparison is the Ravens and the Steelers,
18 because they're both AFC teams. And in that
19 area, the NFL mandates that Ravens games are
20 shown. AFC teams share the same network, CBS,
21 for the homes games. I'm sorry, for the away
22 games. So, that's the better comparison, is

1 that the NFL has decided that territory is so
2 important to Baltimore, that they want the
3 Ravens games on there, more than the Steelers,
4 and equally as much as the Eagles. That's my
5 opinion of what they've designated that area
6 for.

7 JUDGE SIPPEL: Well, they must
8 give some kind of an explanation. Is this
9 something you're just putting together in your
10 head, or is this something that they talk
11 about?

12 THE WITNESS: Well, the NFL hands
13 teams their territories.

14 JUDGE SIPPEL: Yes, I know they
15 do, but they must have -- do they have a
16 paper, and they say here's why, or do they
17 just say that's the way it is? You know, my
18 way, or the highway.

19 THE WITNESS: Yes. I couldn't
20 answer that, sir. I mean, I don't deal with
21 the NFL, the Ravens. I just deal with -

22 JUDGE SIPPEL: Okay. I'm sorry.

1 BY MR. SCHONMAN:

2 Q Mr. Cuddihy, I understand MASN
3 would love to have 100 percent coverage in
4 this territory, as General Motors would
5 probably love to be able to reach every single
6 consumer to sell its cars to. Now, I could
7 also understand, perhaps, if the Baltimore --
8 if Comcast's Baltimore system decided not to
9 carry the Os, or if the cable systems in the
10 District decided not to carry that Nats. That
11 would be critically important. But we're
12 talking Harrisburg, and we're talking
13 Lynchburg-Roanoke, and Tri-Cities. And I'm
14 failing to understand why the failure of MSN
15 to get coverage in those three communities is
16 critically important.

17 A Sir, every time that we are able
18 to take our ratings up by one-tenth of a
19 percent, meaning going from a [REDACTED]
20 we're able to charge an increased rate for
21 advertising. We're not carried in those
22 areas, our ratings suffer, and we're not able

1 to show true measure of -- let me say it this
2 way.

3 We're not able to show the
4 advertisers a rating that would be equal to
5 what Comcast Sports Net was able to show them.
6 So, our product is diminished, because we
7 don't get ratings in those areas. And
8 advertising suffers, and viewership suffers,
9 and we get a bad name.

10 People out there don't understand
11 why MASN isn't carried. They just understand
12 that MASN isn't carried. And whether they
13 blame MASN or Comcast, is totally up to them.
14 I mean, we don't put our paraphernalia saying
15 blame Comcast, or this is why your rates are
16 increased. We have to sit there and take it,
17 and I have to deal with Commissioners, with
18 the Big South, the official cable network in
19 the Big South. We have Liberty Basketball,
20 Liberty Football, VMI Basketball, VMI Football
21 in those areas, and we're lucky enough to get
22 their product, but we suffer because we're not

1 carried by Comcast in that area. Most people
2 think it's MASN's fault, that they're charging
3 too much, or that they don't want to be
4 carried in this area. They don't know why,
5 but we take a hit when we're not carried.

6 BY MR. SCHONMAN:

7 Q So, MASN is not in jeopardy of
8 going out of business if it doesn't get
9 carriage in these three communities. That
10 would be critical, wouldn't it, if it were in
11 jeopardy of failing?

12 A We're not in danger of going out
13 of business. We're in danger that we're not
14 being treated the same, we're not being
15 treated fairly, as Comcast treats CSNMA. And,
16 in time, we'll lose product, and not be able
17 to compete for product because of those holes.
18 And that I consider critical. When you can't
19 have access because of carriage holes to pro
20 product, like the Caps and Wizards, you're in
21 trouble. You're not playing fairly. We're
22 not on the same tier then.

1 Q Is it your understanding that
2 Comcast is required to carry the programming
3 of all who ask it to carry? Do you understand
4 my question?

5 A Yes. I don't think Comcast has an
6 obligation, nor do I think they do carry the
7 networks of every programmer that asks to be
8 carried. I think that's your question, if I
9 got that right.

10 Q That was exactly my question.

11 A Yes.

12 Q On the top of Page 11, that would
13 be the beginning of Paragraph 38, you go on to
14 say, "Comcast's denial of such a large stream
15 of subscriber revenue, harms MASN." I don't
16 know that we have anyone in the room from the
17 press or public, but what type of subscriber
18 revenue are you talking about there?

19 A Over time it's going to be [REDACTED]
20 [REDACTED].

21 Q Well, let's take one year.

22 A So, that would be -- I really

1 don't want to give you that amount. I just
2 don't -- I don't have those numbers in front
3 of me. I couldn't tell you.

4 Q Give me a ballpark figure,
5 something, to use a phrase.

6 A I'd be uncomfortable doing that.

7 Q Well, what do you consider to be
8 large, as in large stream? This is your
9 testimony. I'm just trying to understand what
10 it is you're referring to here.

11 A Yes, I thought -- I understood you
12 were asking for specific numbers.

13 Q Are we talking \$10,000 a year?

14 A No, sir. We're talking millions
15 of dollars a year.

16 Q Are we talking a hundred million
17 dollars a year?

18 A No, we're not.

19 Q Are we talking one million dollars
20 a year?

21 A We're talking more than that. We
22 might be talking -

1 Q I could go through a bunch of
2 numbers.

3 A Oh, no, I really -

4 JUDGE SIPPEL: He's going with
5 you.

6 THE WITNESS: Yes, I'm really
7 ballparking this for you. And I'd rather not
8 be held to it, sir. But I believe it might be
9 [REDACTED] dollars a year, those
10 territories. But, again, I don't have -

11 JUDGE SIPPEL: Each or as a group?

12 THE WITNESS: No, as a group a
13 year, but that's just me going off. I wish
14 had my papers in front of me to tell you a
15 better number.

16 JUDGE SIPPEL: No, I think that's
17 a good question, and I think you've done your
18 best to answer, as far as I can tell.

19 THE WITNESS: Thank you, sir.

20 JUDGE SIPPEL: But you did make --
21 you did sign a -- your testimony that said a
22 large stream of subscriber revenue, and,

1 presumably, you had something in mind.

2 THE WITNESS: It's [REDACTED] of
3 dollars.

4 JUDGE SIPPEL: Okay. You've
5 answered. Okay.

6 BY MR. SCHONMAN:

7 Q Now, I'm trying to get a handle on
8 what part of MASN's overall revenue stream
9 those three markets would represent, in your
10 opinion. If it's in the range of [REDACTED],
11 I'm not holding you to that number, it's in
12 the -- I'm assuming it's less than [REDACTED], you
13 say [REDACTED]. I'm not holding you to any number,
14 but could you offer me, what percentage is
15 that of MASN's overall revenue stream, please?

16 A Ballpark around -- subscriber
17 revenue, really I'm ballparking this. I
18 really uncomfortable, because I don't have my
19 notes in front of me, my analysis in front of
20 me. [REDACTED], something like
21 that.

22 Q So, it sorts of tracks the numbers

1 of subscribers pretty much, because I think
2 the number of subscribers at the bottom of
3 page -- at the bottom of Paragraph 37 is
4 something in that neighborhood.

5 A Sir, like I said, I mean, I really
6 feel uncomfortable without my analysis in
7 front of me to be more specific, because I'm
8 throwing numbers out there.

9 JUDGE SIPPEL: What were you -- is
10 there going to be somebody, some witness
11 that's going to pull this together?

12 MR. FREDERICK: Yes, Your Honor.

13 JUDGE SIPPEL: All right.

14 MR. FREDERICK: The economist,
15 it's in his report, and he will be testifying
16 about financial impacts.

17 BY MR. SCHONMAN:

18 Q Mr. Cuddihy, in Paragraphs 37-43,
19 you talk about -- it's essentially a list of
20 horrors here. For example, 41, you -- in
21 almost every paragraph you say that Comcast's
22 action affect MASN unfairly. Do you see in

1 41, second line, "Unfairly harms MASN's
2 ability to compete to advertising dollars."
3 In Paragraph 42, "Coverage gaps also have
4 unfairly harmed MASN's efforts to sell
5 advertising." 43, "Coverage gaps unfairly
6 harm MASN's abilities on advertising dollars."
7 Now, I understand that because of gaps in the
8 coverage it has adverse effects on MASN.
9 That's understandable. My question is, why do
10 you consider all these harms to be unfair?

11 A Because our number one competitor
12 doesn't deal with these same issues. Comcast
13 Sports Net, they're just giving in to all
14 those territories, and we're not. So, that's
15 unfair on just standalone on that basis.

16 Q But, I thought a moment ago you
17 said it was your understanding that a cable
18 carrier doesn't have to carry every programmer
19 that asks for coverage.

20 A You asked about a programmer, and
21 I said before that, my view is, Regional
22 Sports Networks are different than other

1 programmers. This programming is unique, it's
2 unable to be duplicated, and it's exclusive.

3 Q So, Regional Sports Networks must
4 be carried upon request. Is that your
5 understanding?

6 MR. FREDERICK: Objection, Your
7 Honor.

8 THE WITNESS: No.

9 MR. FREDERICK: He's asked that
10 question, and it is not -- it's been answered.
11 He's asking for a legal conclusion from a fact
12 witness.

13 JUDGE SIPPEL: I'll sustain the
14 objection. While you're checking your notes,
15 Mr. Schonman, I'm just going to ask this
16 question. You can answer it, or if you want
17 to stop on me this. But, what is the real
18 complaint here? Is it about Harrisburg, or is
19 about Harrisburg, Roanoke, Tristate, because
20 I've heard both ways on this.

21 MR. FREDERICK: Your Honor,
22 approximately the number of subscribers in

1 systems in those three DMAs, and three or four
2 other DMAs.

3 MR. KIRK: Your Honor, can I
4 object? I mean, counsel is testifying. There
5 are witnesses that are going to be giving
6 these -

7 JUDGE SIPPEL: Well, I asked the
8 question in a very broad way, but I -- I mean,
9 it is sort of a legal question, too. I want
10 to know what is the issue here? The issue
11 here is the unfair treatment, but in what --
12 certainly, in the Harrisburg market, but what
13 about these other two markets? Is that -

14 MR. KIRK: There's [REDACTED]
15 subscribers that were allegedly left out of
16 the agreement that aren't subject to mandatory
17 carriage. When you break that down, there's
18 roughly [REDACTED] in Harrisburg, for instance,
19 in Southwestern Virginia, roughly. The
20 parties agreed to carve out from the agreement
21 150,000 subscribers, the evidence will show,
22 the former Adelphia systems, and the Roanoke-

1 Lynchburg, and Southwestern Virginia area.

2 So, if the parties agreed to carve those out,
3 the number of subscribers you're left with, in
4 essence, is Harrisburg.

5 MR. FREDERICK: Your Honor -

6 JUDGE SIPPEL: Is that basically
7 correct, sir?

8 MR. FREDERICK: That is correct in
9 so far as it goes. The testimony will also
10 show that those that are being carved out in
11 Roanoke and Lynchburg were former, alleged
12 former Adelphia systems that needed to be
13 upgraded. And the testimony is going to show
14 Adelphia had already upgraded them, so have
15 the requisite bandwidth to carry. And the
16 testimony will show that for all [REDACTED]
17 subscribers that have been omitted from launch
18 by Comcast, virtually every single one of them
19 receives a Comcast Sports Net.

20 JUDGE SIPPEL: Receives a Comcast
21 what?

22 MR. FREDERICK: Sports Net,